

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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Richard J. Klein,  
Petitioner

vs

Case No. 1:01cv794  
(Beckwith, J.; Black, M.J.)

Harold Carter,  
Respondent

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**ORDER**

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This habeas corpus action filed pro se pursuant to 28 U.S.C. § 2254 is before the Court on petitioner's motion for leave for discovery and expansion of the record, and to file appendix of exhibits (Doc. 46); amended motion for leave for discovery and expansion of the record and motion to strike previously filed motion for discovery/expansion (Doc. 49), to which respondent has filed a response (*see* Doc. 50); motion to strike or overrule respondent's memorandum opposing petitioner's motion for leave to amend the petition (Doc. 48); motion for extension of time to file an amended petition (Doc. 52); and motion to withdraw two claims for relief (Doc. 67).

Petitioner's motion to strike or overrule respondent's memorandum opposing petitioner's motion for leave to amend the petition (Doc. 48) is DENIED. The motion, which was filed after the Court ruled in petitioner's favor by granting his motion to amend (*see* Doc. 47), is moot.

Petitioner's motion for extension of time to file his amended petition (Doc. 52), as well as petitioner's motion to withdraw two of his claims alleged in his Fourteenth and Fifteenth Grounds for Relief (Doc. 67), are GRANTED. It is hereby ORDERED that petitioner's Fourteenth and Fifteenth Grounds for Relief, alleged in pages 102 through 110 of the amended petition (*see* Doc. 53), are WITHDRAWN from review by this Court.



Petitioner's motion to strike his previously filed motion for discovery/expansion (Doc. 49) is GRANTED. It is hereby ORDERED that petitioner's original motion for leave for discovery and expansion of the record, and to file appendix of exhibits (Doc. 46) be STRICKEN from the record.

In his amended motion for leave for discovery and expansion of the record (Doc. 49), it appears petitioner is requesting that he be allowed to file an appendix containing the following documents that are now in his possession: "motion to reduce number of copies" filed June 15, 2000; "application for delayed reopening appeal" filed January 2, 2001; "motion to file amended and supplemental appeal brief" filed July 27, 1999; police search warrants and itemized seizure lists; and co-defendant Richmond's three *Miranda* waivers. The only item petitioner requests to be produced by respondent is the "Affidavit of Attorney Ann[e] Fluh[ ]arty," which he claims was attached to his motion for new trial filed May 27, 1997. Respondent does not state any opposition to petitioner's request for expansion of the record and has provided to the Court the only affidavit of Ms. Fluharty in the State's possession of which respondent's counsel is aware. (*See* Doc. 50). Therefore, petitioner's amended motion for leave for discovery and expansion of the record (Doc. 49) is GRANTED to the extent petitioner is permitted to submit for inclusion in the record the documents in his possession that are listed in his motion and to the extent respondent has provided as requested by petitioner the only "Affidavit of Anne M. Fluharty" that appears to be in the State's possession.

IT IS SO ORDERED.

Date: 1/19/05  
cbc

s/Timothy S. Black  
Timothy S. Black  
United States Magistrate Judge